IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3652 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

GUNVANTRAI MOHANLAL KHER
VERSUS
DISTRICT PANCHAYAT, AMRELI & ANR.

Appearance:
MR PV HATHI for petitioner
MR JD AJMERA for respondents

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:13/07/2000

C.A.V. JUDGMENT

#. The petitioner, a Talati-cum-Mantri in the District Panchayat, Amreli, challenges the orders Annexures-B, C

and D of the Deputy District Development Officer, Amreli, District Development Officer, Amreli, and Gujarat Civil Services Tribunal, Gandhinagar, in Appeal No.552 of 1988, in the matter of disciplinary action taken against the petitioner and as a result of proving of charges against him, he was removed from services.

#. The facts of the case are that in 1980, the petitioner was appointed as Talati-cum-Mantri, District Panchayat, Amreli. Vide memo dated 19th October, 1984, of the respondent No.2, a chargesheet was served upon the petitioner in which it is alleged that he has temporarily misappropriated the amount of Rs.2,199/= of land revenue and Rs.148.94 of education cess. Further charge has been alleged against him that he made changes in the dates in the counter foils of the receipts issued by him for the amount of land revenue and education cess collected from the Khatedars. After receipt of reply to the chargesheet, the disciplinary authority, decided to hold departmental inquiry against the petitioner. On 27.4.87, the inquiry officer completed departmental inquiry and held that the charges levelled against the petitioner are proved. On 18th June 1987, notice was given to the petitioner to show cause as to why the petitioner should not be removed from services. He submitted detailed reply to the show cause notice mainly contending therein that the receipts which are said to have been tampered with were not produced on the record and he had no opportunity to dispute the said fact and the oral evidence of one witness who had no personal knowledge was not sufficient to hold him guilty of charges levelled against him. After considering reply to the show cause notice, the disciplinary authority under its order dated 30th September, 1988, removed the petitioner from services. The petitioner has challenged the order of the disciplinary authority before the District Development Officer who, on prayer of the petitioner, has granted stay against his removal from services pending appeal. Ultimately, the appeal was dismissed by the appellate authority on 1.11.88. The petitioner then filed appeal before the Gujarat Civil Services Tribunal which came to be rejected on 9.5.89. Hence this special civil application.

#. This petition has is filed by petitioner in the court on 5.6.89. On the same day, it was placed in the court for preliminary hearing. Notice was issued to the respondents. This court has further ordered for status-quo regarding the petitioner's service condition as on that date. Then the matter was admitted on 19th July 1989 and status-quo to continue was ordered till

final hearing of the special civil application. The respondent filed detailed reply to the special civil application. A further affidavit has also been filed by respondents, copy of which has been given to the learned counsel for the petitioner. The original of that affidavit is not on record but the learned counsel for the petitioner has passed over a copy of the same which he received from the respondents. This is dated 7.4.2000. By this further affidavit, the respondents have brought on record few more facts pertaining to the matter. A criminal complaint was filed on 1.3.86 against the petitioner for commission of offences u/s.409, 477(A), read with Section 114 Indian Penal Code before Liliya Police Station. On completion of investigation in that criminal complaint, chargesheet has been submitted and in the criminal case, the petitioner came to be convicted by the learned Judicial Magistrate, First Class, Liliya, under its judgment dated 30.4.92. He was held to be guilty of the offences alleged against him and was sentenced for R.I. for two years. Against the judgment of Judicial Magistrate, First Class, Liliya, the petitioner preferred appeal which is pending before the Sessions Court. The petitioner has filed Regular Civil Suit No.171 of 1992 in the Court of learned Civil Judge (J.D.), Amreli, interalia alleging that no departmental action should be taken against him. That appears to have been done by him after his conviction aforesaid having apprehension that the department may initiate departmental action against him for his dismissal. Ultimately that suit was dismissed by the court on 1.4.98. In the civil suit, interim relief has been granted and which continued for all these years. It is stated that thereafter the Deputy District Development Officer has issued show cause notice to the petitioner dated 6.5.98 that he has been convicted in criminal case and civil suit has been dismissed and therefore the Panchayat is entitled to take departmental action against him. This notice was given under the Gujarat Panchayats Services (Discipline & Appeal) Rules, to show cause why he should not be dismissed from services. On 25th may 1998, the petitioner gave reply to the said show cause notice. However, the respondents as per their say in the additional affidavit could not proceed further with this notice as this court has granted in this special civil application, the order to maintain status-quo and the appeal filed against conviction is pending in Sessions Court. It is decided to take action after disposal of these two proceedings. The respondents have given out that though this matter is altogether different and the show cause notice has been given to the petitioner for another misconduct committed but to avoid any

misunderstanding that the respondent have flouted interim order of this court, the respondent-authority has not proceeded further with the said show cause notice. It is stated that the petitioner was given show cause notice by the Deputy District Development Officer (Establishment), Amreli, on 29th July 1989, for temporary misappropriation of the Government money. The petitioner came to be suspended from services under the order dated 25th October, 1989, for temporary misappropriation of Government money. However, no further action has been taken in that show cause notice and the proceedings are pending. After stating these facts, in para-5 of the further affidavit, the respondent stated that it is clear that the petitioner is involved in such serious criminal cases as well as he has committed further serious misconduct.

#. From reading of this affidavit, I have no hesitation to state that the officers of the District Panchayat are favouring a corrupt person at all the levels. I fail to see any justification whatsoever in their action not to proceed against the petitioner by taking disciplinary action after his conviction in criminal case for offences u/s.409 and 477A IPC as well as in the chargesheet which has been given in the year 1989. The explanation which has been furnished, otherwise also, clearly goes to show that it is only face saving and with an object to hide their this wholly unjustified conduct. In case this court has protected the petitioner by grant of status-quo then in the second chargesheet what for the petitioner has been put under suspension. If what the respondent considers that further proceedings were not taken to avoid any misunderstanding that respondent has flouted interim order by this court, the petitioner should not have been placed under suspension also. The very fact that this has been done way back in the year 1989 goes to show that what now they are projecting is nothing but only an explanation to save respondent from any observation which may be there against them from this court. Even if it is assumed that what they say is correct, then first and foremost stand should have been on their behalf to file appropriate application in these proceedings for clarification of the stay order. That has not been done. The suit has been dismissed by trial court in April 1998 and immediately thereafter, they should have come up before this court to get necessary clarification of the stay order but as the persons are there to favour the petitioner in the District Panchayat, it has not been done. Worst part is that another departmental inquiry has been started in the year 1989 but the respondent have not proceeded for all these years

therein which clearly goes to show that somebody is sitting there in the District Panchayat to favour the petitioner. For this inquiry also wherein the petitioner has bene placed under suspension, the respondents have not got any clarification from this court. The respondent knew very well as what it is reflected that all these three matters are altogether different and distinct and they could have proceeded in those three matters but have taken this writ petition to be a protected umbrella for them not to proceed against the petitioner. This is nothing but only an excuse for the sake of excuse and to cover up their deliberate inaction and omission who have favoured the petitioner.

#. It is no more res-integra that on conviction of an employee/officer of the State Government or Panchayat in a criminal case involving moral turpitude, he can be dismissed or removed from services without holding any departmental inquiry. The petitioner was admittedly convicted by the Judicial Magistrate, First Class for the offences punishable u/s.409 and 477A of Indian Penal Code and these offences are certainly offences involving moral turpitude. Against the judgment of Judicial Magistrate, it is true that the petitioner filed appeal before the Sessions Court and the appeal is pending. Though it is not stated by either of the parties but it is not the case of petitioner that the appellate court has suspended conviction of the petitioner for the offences aforesaid. At the most, he could have been enlarged on bail. Enlargement of an accused on bail by the appellate court does not mean and it cannot be taken to be suspension of his conviction. It is only a case of suspension of sentence. Sentence and conviction are two different things. Disqualification to continue in service on conviction in a criminal case involving moral turpitude incurs on the date on which the concerned officer/ employee has been convicted by the criminal court. If this conviction has not been suspended by the appellate court, certainly the disciplinary authority is free to take appropriate disciplinary action and order for his removal or dismissal from services. In this case, if we go by the facts stated in the additional affidavit of the respondent, an inference can be drawn that the officers in the District Panchayat concerned have not taken action against the petitioner only to favour him. At the cost of repetition, it is to be reiterated that the so called approach of the officers of the District Panchayat that this matter is pending in this court is wholly perverse and arbitrary and it appears to be only a pretext to fill up their these lapses, lacunas and omissions which prima-facie appear to have been deliberately made for the

purpose and object to extend favour to the petitioner. It is to be stated again at the cost of repetition that if the officers/ employees would have been really faithful and honest to their employer instead of taking their own decision in the matter they should have approached to this court in this matter for clarification of the order and which as stated earlier has not been done. In the case of temporary embezzlement the respondents felt contended and satisfied of suspending the petitioner and further inquiry was not proceeded which is wholly perverse and arbitrary and in fact it amounts to extending helping hand to the petitioner.

#. The learned counsel for the petitioner submits that these averments made in the additional affidavit have no relevance whatsoever to the present case. Subsequent misconduct or criminal case may not be taken to be relevant for the purpose of deciding this matter. The respondents have only given out the facts and these are on the record. What is relevance of these facts in the matter will be considered at the appropriate place in the judgment. However, the learned counsel for the petitioner is not disputing these facts. The learned counsel for the petitioner contended that the Tribunal was not justified in filling lacuna in the evidence produced by the presenting officer in departmental inquiry by allowing the respondents to produce the original receipts at the time of arguments. Carrying this contention further, the learned counsel for the petitioner submits that the learned Tribunal has committed serious error of jurisdiction in assuming, presuming that the alterations in the dates in the second copy (carbon copy) of the original receipts were made by petitioner without giving full and reasonable opportunity to the petitioner to controvert the said evidence. The learned counsel for the petitioner urges that the Tribunal was not justified in taking upon itself, the task of recording new evidence at the second appellate stage in order to justify the decision of the disciplinary authority and the appellate authority. It has next been contended that the only witness which has been examined in the inquiry by the presenting officer was not concerned witness and the examination of that witness in this way and manner has caused serious prejudice to the defence of the petitioner. Carrying this contention further, the learned counsel for the petitioner submits that the copies of the carbon copies which were produced in the inquiry have also not been furnished to the petitioner and as such, he has been deprived of his valuable right of defence. It has next been contended that the Tribunal has accepted as a fact

that there were some defects in the charges levelled against the petitioner so far as the amount of temporary embezzlement involved is concerned, but despite of the same, it has affirmed the judgment of the disciplinary authority and the appellate authority. It is further contended that in the case of one Talati-cum-Mantri, serving in the same District, though he was held to be guilty of misconduct of temporary misappropriation of money of the Panchayat, in his case, disciplinary authority has given him penalty of withholding of his two annual grade increments with future effect. The case of the petitioner is identical to that person but in the matter of penalty a hostile discrimination has been meted out. Lastly, it is contended that it is case of temporary misappropriation or embezzlement of small sum and the penalty of removal of the petitioner from services is highly excessive and disproportionate.

#. Mr.Ajmera, the learned counsel for the respondent on the other hand supported the orders of the authorities as well as the Tribunal.

#. Having given my thoughtful consideration to the submissions made by learned counsel for the parties, I am satisfied that this petition has no merits and deserves to be dismissed.

#. All the three authorities concurrently held that the petitioner has made temporary embezzlement or misappropriation of amount of land revenue and education cess which he has collected from Khatedars. It is also proved as a fact which is clearly borne out from the judgment of the Tribunal that the petitioner, to save himself from these possible charges of misappropriation or embezzlement of money of the Panchayat, has tampered with the carbon copy of the receipts. In this case, in departmental inquiry, it is true that original of the carbon copies were not produced. But sufficient material has been produced in the inquiry, i.e. the carbon copies to show that therein tampering is made. Before the Tribunal as well as in this court, it is contended that merely on the basis of some tampering on the carbon copies of the receipts, no inference or presumption could have been drawn that it has been done by petitioner. This aspect of the matter which has been advanced before the Tribunal has been considered by the Tribunal elaborately in the context of the evidence produced and rightly it has come to the conclusion that in the facts of the case, nobody else, but the petitioner has made all these tampering in the carbon copies. It is very difficult to have a direct evidence of such tampering of

these documents but looking to the facts of the case and in fact, the admitted case that the petitioner has not deposited the amount of land revenue and education cess collected by him within time, the only inference follows therefrom is that nobody else than the petitioner is the person who has done all this tampering. How else would have been benefitted by this tampering? The documents have been produced by the witness who have been examined by the presenting officer. These documents, the carbon copies, though remain in possession of Talati-cum-Mantri but it is too difficult to infer or accept that that Talati-cum-Mantri did all these things. What for he will do all these things? It is also to be noticed that the petitioner has not come up with defence that somebody else has made all these tampering in the carbon copies of receipts of the land revenue and education cess. In the absence of this defence, otherwise also, in these facts and circumstances of the case and the material which has come on record and the charges found proved, the Tribunal has rightly drawn an inference that the petitioner is the person who had done all these tampering in the carbon copies. The Tribunal has taken all the care and caution in recording satisfaction on this question of tampering with the documents, i.e. carbon copies of receipts of land revenue and education cess. The original of some of the receipts were called form the Panchayat and the same were produced. The Tribunal has made elaborate analysis, examination of each and every receipt of the land revenue and education cess and the carbon copies have also been compared with the original which have been produced on the record. The original of the receipts were not produced in the departmental inquiry to which there is no dispute. But it is not the case of taking of any additional evidence by the Tribunal. Both the authorities, disciplinary as well as appellate, have accepted that the charges are proved. The Tribunal, to be more sure and that no injustice may be caused to the petitioner, has adopted this course to call the original from the Panchayat for ascertaining the correctness of the judgment given by the two authorities so that no injustice may be caused to the petitioner. On comparison of the original produced with the carbon copies, it is clearly borne out that there was tampering in the dates and that tampering has been made so as to patch the delay which is made by petitioner in depositing the amount of land revenue and education cess which he collected from Khatedars. It is a clear case of tampering and misappropriation or embezzlement of the money of the Panchayat. It is not only a case of temporary misappropriation / embezzlement of the money of Panchayat, but more serious thing is that to patch this

temporary misappropriation/ embezzlement, the petitioner has tampered with the Government record also. I have gone through the judgment of the Tribunal and I am satisfied that the Tribunal has considered each and every receipt on record for its own satisfaction. It is a matter where the Tribunal has taken all pains to act as original disciplinary authority. It has not considered the matter as if it is second appeal but it has proceeded in a manner so that there may not be semblance of any doubt and no prejudice is caused to the petitioner in the matter. As it is a case of removal, the Tribunal has taken all the care and caution to record its own satisfaction that it is really a case where the petitioner deserves to be removed from services.

##. Re.: The only witness, Mr.D.M.Gosai, Talati-cum-Mantri who has been examined in departmental inquiry was not a witness cited in the list of witness. The learned counsel for the petitioner contended that for want of citation of witness in list of witness, serious prejudice is caused to the petitioner. He was not in a position to effectively cross-examine the witness. He produced the receipt books containing the counterfoils. To produced these documents on record in the inquiry naturally somebody has to be called and this witness has been called. This witness has been examined admittedly in the presence of the petitioner but the petitioner has not cross-examined this witness. The Tribunal has recorded finding of fact that this witness was not cross-examined by the appellant (petitioner herein) which can be seen from the note made below the statement of this witness. This finding of fact recorded by the Tribunal has not been challenged by petitioner. In case it would have really been caused any prejudice to the petitioner, I fail to see why a request has not been made for postponing of the matter for recording the statement of this witness. In the departmental inquiry, no such objection has been raised by petitioner. Only in reply to the show cause notice, this objection has been raised. The learned Tribunal has rightly not accepted this contention of the petitioner on the ground that the petitioner has not made a request to the inquiry officer to give him time so as to enable him to cross-examine this witness with the help of his friend Mr.B.M.Vyas. Though before the Tribunal and before this court, it is contended that production of this witness has caused prejudice to the petitioner, it was not illustrated how any prejudice has been caused. This witness has brought original record consisting counter foils of the receipts and it could have been got produced through anybody serving in the office where the petitioner was serving at

the relevant time. So as a result of aforesaid discussion, non mentioning the name of this witness in the list of witness has not resulted in causing any prejudice to the defence of the petitioner.

##. Re.: The petitioner was not given copies of the counter foils of the receipt in defence. The learned counsel for the petitioner has failed to show how by this any prejudice has been caused to the petitioner in his defence. It is not in dispute that in the statement of accounts which has been produced in the departmental inquiry, all the necessary details of these receipts were suppled to the petitioner along with the chargesheet. So the petitioner was very well known of the number of receipts, the date mentioned therein and all other material particulars. Moreover, the petitioner nowhere stated in the special civil application that he has raised this objection before the disciplinary authority or before the first appellate authority. Even it is also not the case of petitioner before the Tribunal that he made complaint of this before the disciplinary authority or appellate authority. In case the petitioner was really in need of these copies of documents, he could have requested to the inquiry officer to furnish to him or where copies are not to be given, he could have prayed for inspection thereof. The very fact that the petitioner neither made request for giving copies of these documents or permitting him for inspection of the same goes to show that this is nothing but only a contention or a ground raised in the second appeal.

##. Re.: The learned Tribunal has found some defect in the charge levelled against the petitioner. This defect relates to the amount of temporary misappropriation or embezzlement made by petitioner. In the chargesheet, Rs.2,199.01 ps. were stated to be the amount which has been temporarily embezzled or misappropriated by petitioner of the land revenue and Rs.148=94 being the amount of education cess. On scrutiny of evidence, the Tribunal has found that the amount of education cess which has been temporarily misappropriated or embezzled is to the tune of Rs.110.69 ps. The learned Tribunal has considered this aspect and it was satisfied that it may not material make any difference in the matter. I am in full agreement with this approach of the Tribunal. Otherwise also, I am satisfied that by this discrepancy in the figure of amount of the education cess, how it can be taken to be a case where the whole inquiry is to be taken to have vitiated and the petitioner has to be exonerated of charges. By these discrepancies at the most it can be said that the amount of embezzlement or

misappropriation which has been made temporarily by the petitioner is not the amount as figured but slightly less than what it is figured in the chargesheet.

##. It is the discretion of the disciplinary authority and the appellate authority whose powers are coextensive to impose appropriate penalty upon the delinquent for proved misconduct. In this case, both, disciplinary authority as well as appellate authority have considered it to be a case where the penalty of removal is to be imposed upon the petitioner and the Tribunal has also not interfered with this penalty. It is the sole domain of disciplinary authority and appellate authority to decide what punishment has to be given for the proved misconduct to the delinquent. In the matter of punishment/ penalty in disciplinary matters, the Tribunal as well as this court have very very limited power of judicial review. The Tribunal has considered this aspect and held that it is not a case where penalty given to the petitioner is excessive, harsh or disproportionate. This court, sitting under Article 226/ 227 of the Constitution of India, has very limited power of judicial review in matter and if any citation is required, then reference may have to the decision of the apex court in the case of Union of India v. B.C.Chaturvedi reported in JT 1995(8) SC 65 Only in case where this court is satisfied that the penalty given to the delinquent is shocking to its conscience then only the matter may be sent back to the appellate authority or disciplinary authority to consider the same afresh in the light of observations made. Here, it is a case of embezzlement or misappropriation of the Panchayat money by the petitioner, may be temporarily, but when all the three authorities have not considered it to be a case of excessive, harsh or disproportionate penalty, I fail to see how it is justified by the petitioner to raise such a contention before this court. In the facts of this case, this penalty given to the petitioner is not disproportionate, excessive or harsh.

##. In the matter of penalty to be given for proved misconduct to the delinquent, there should be consistency and if in the similar case, different penalties have been given there may be possibility of levelling of charges against the officer concerned of favouritism or order passed for some extraneous consideration. In the present case, I find that the disciplinary authority has acted liberally for the reasons best known to it in the matter of imposing penalty to one Mr.R.B.Dafada, Talati-cum-Mantri of the same District Panchayat. But only on the basis of this order, whether relief can be granted to the petitioner is important question. It is

no more res-integra that on the basis of some illegal order of the authority, no plea of discrimination can be permitted to be raised by the court. Reference in this respect may have to the decision of the apex court in the case of Chandigarh Administration v. Jagjit Singh reported in AIR 1995 SC 705. In this case, at the most, it can be taken that the order of the disciplinary authority passed in the case of Mr.R.B.Dafada, Talati-cum-Mantri, may be illegal, but only on this, no relief can be granted to the petitioner. This court cannot go on to examine the validity of that order as it is not the subject matter of challenge in this writ petition as well as that person is also not a party here. That order may be illegal order but on this ground, the petitioner cannot be protected by this court. However, it is a matter for the State Government to consider and if it does not consider, certainly it will give encouragement to favouritism, nepotism and corruption amongst officers. That gives pains to the other persons also because he could not manage to get an order of identical nature in his favour as what it has bee passed in the identical case of other persons. To mitigate this pain, suffering, feelings and alleged discrimination amongst the employees and officers of the Government or Panchayat, there must be some check from the State Government. The matter could have been taken in suo motu revision by the higher authority in the case of Mr.Dafada but even if it is not done, this court will not grant relief to the petitioner, otherwise, what it will result that illegal decision of the authorities will prevail over the decision of the court. The court has to examine the matter which is there before it and in case it is satisfied that this penalty given to the delinquent officer/ employee is just and reasonable, then it should not be influenced by the fact that in identical matter, disciplinary authority has treated other delinquent differently.

##. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. The petitioner is directed to pay Rs.2,000/= as costs of this petition to the District Panchayat.

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(sunil)